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MAKING BAIL JUMPING A SEPARATE CRIME

HEARINGS

BEFORE

SUBCOMMITTEE NO. 4

OF THE

U.S. Congress House
" COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-THIRD CONGRESS

SECOND SESSION

ON

H. R. 8658

A BILL TO AMEND TITLE 18, UNITED STATES CODE, TO
PROVIDE PUNISHMENT OF PERSONS WHO
JUMP BAIL

APRIL 14 AND MAY 18, 1954

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EIGHTY-THIRD CONGRESS

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CONTENTS

APRIL 14, 1954

	Page
Text of H. R. 8658.....	1
Testimony of—	
Hon. Richard E. Poff, a Representative in Congress from the State of Virginia.....	1
Martin Richman, Esq., Criminal Division, Department of Justice.....	3
Kevin T. Maroney, Esq., Internal Security Section, Criminal Division, Department of Justice.....	5
Recommendation of a New York State Crime Commission for a bail-jumping statute.....	4
Letter from the Attorney General, Hon. Herbert Brownell, Jr., addressed to the Speaker, House of Representatives.....	5

MAY 18, 1954

Testimony of—	
Hon. Richard E. Poff, a Representative in Congress from the State of Virginia.....	9-27
Martin Richman, Esq., Criminal Division, Department of Justice.....	10-27
Kevin T. Maroney, Esq., Internal Security Section, Criminal Division, Department of Justice.....	11-27
Supplemental statement, transmitted by Alan A. Lindsay, Executive Assistant, Criminal Division, Department of Justice.....	27
New York State Statute re bail jumping.....	33
Canadian statute re bail jumping.....	33
Tabulation of bond forfeitures reported by United States attorneys during the first 10 months of the fiscal year 1954.....	33

III

no. 16

1

2

3

4

5

6

7

8

9

10

MAKING BAIL JUMPING A SEPARATE CRIME

WEDNESDAY, APRIL 14, 1954

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 4 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to notice, at 10 a. m. in room 346, Old House Office Building, the Honorable William M. McCulloch (chairman of the subcommittee) presiding.

Present: The Honorable Messrs. McCulloch, Curtis (Massachusetts), and Jones (North Carolina).

Also present: Mr. Malcolm Mecartney, committee counsel.

Mr. McCULLOCH. The subcommittee will please come to order.

The committee has scheduled this morning for consideration H. R. 8658, a bill offered by our distinguished colleague, Mr. Poff.

(H. R. 8658 is as follows:)

[H. R. 8658, 83d Cong., 2d sess.]

A BILL To amend title 18, United States Code, to provide for the punishment of persons who jump bail

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 207 of title 18, United States Code, is amended by inserting, immediately following section 3145 of such chapter, a new section to be designated as section 3146 and to read as follows:

"Sec. 3146. Jumping bail

"Whoever, having been admitted to bail for appearance before any United States commissioner or court of the United States, incurs a forfeiture of the bail and willfully fails to surrender himself within thirty days following the date of such forfeiture, shall, if the bail was given in connection with a charge of felony or pending appeal or certiorari after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or, if the bail was given in connection with a charge of committing a misdemeanor, or for appearance as a witness, be fined not more than \$1,000 or imprisoned not more than one year, or both.

"Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

SEC. 2. The analysis of chapter 207 of title 18, United States Code, immediately preceding section 3141 of such title, is amended by adding the following new item:

"3146. Jumping bail."

Mr. McCULLOCH. The committee would be glad to hear the author of the bill at this time.

Mr. POFF. Thank you, Mr. Chairman, Mr. Curtis, and Mr. Jones.

STATEMENT OF HON. RICHARD H. POFF, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF VIRGINIA

Mr. POFF. I have with me today two attorneys from the Criminal Division of the Department of Justice who will be available after I

have concluded my brief statement for such questions as you may care to ask and who may also give a brief statement in their own behalf.

H. R. 8658, which you have before you, is very simple in its terms but very far reaching. It would make it a crime for a Federal criminal to jump bail.

As you know, Federal law now allows the court to grant a defendant temporary freedom if the person posts bond or bail. This applies to a person imprisoned on a criminal charge or to persons under an indictment awaiting trial and to persons already convicted and awaiting an appeal.

It also applies under certain circumstances to witnesses in criminal proceedings.

Experience has proved that too many of these people escape justice themselves or hamper the prosecution of other criminals by jumping bail. They are willing, in effect, to forfeit their bond in exchange for their freedom. This is especially true of Communist defendants whose bonds are posted through Communist organizations with an unlimited amount of money.

Recently in the Dennis case (341 U. S. 494) 4 of these convicted Communists, Dennis himself, Gus Hall, Henry Winston, Gilbert Greene, and R. G. Thompson, put up a bond of \$20,000 each, escaped and did not appear at the appointed time after they were convicted and while waiting by certiorari.

It is not right, of course, that traitors such as these should thus thwart the justice of the law, and the purport of my bill is to punish them according to the gravity of the offense. You will see from the latter part of the bill that if the bail was given in connection with a charge of felony or pending appeal or certiorari after conviction of any offense, the fine is not more than \$5,000 or imprisonment of not more than 5 years, or both. Or, if the bail was given in connection with a charge of committing a misdemeanor, or for appearance as a witness, the fine is not more than \$1,000 or imprisonment for not more than 1 year, or both.

If bail is given and later forfeited by a witness in a criminal proceeding then the punishment is a fine of not more than \$1,000 or imprisonment of not more than 1 year, either or both.

The bill further provides incidentally, and I think this is important, that conviction and punishment for this new crime of bail jumping shall not restrict the power of the court to punish for contempt.

Allow me to amplify in some detail the type of cases in which this bill would be applicable. In the Dennis case, these 4 Communists were convicted and posted the \$20,000 bond and then were set free. When the bond was posted the court also verbally directed them to appear at a day certain. They did not appear. Two of them have been apprehended. Gus Hall was taken into custody, about 3 months after he left, near the Mexican border. Thompson was caught in the Sierras last summer.

This case points up graphically the need for this legislation. When these men were brought back to the court they were tried for contempt and were convicted of contempt for failing to appear on the day certain, and also, and this is significant, for violating the bond.

On appeal the conviction for contempt for failing to appear was upheld, but the conviction for violating the bond was reversed because,

as the court held, the bond itself contained a forfeiture provision. You can readily see that this bill would cure that situation.

There is the other case of Gerhardt Eisler, who, after being convicted in a New York court and a Washington court, then stowed away on the Polish steamer *Batory*. They took him off the boat in England and tried to extradite him, but because he was not within the statute he was allowed to escape to East Germany where he rose to a position of some eminence, from which he was recently deposed.

That, as briefly as I can put it, is the substance of the bill. If I can answer any questions, I shall be glad to do so.

Mr. JONES. What is the purpose of the bill providing that after a person jumps bail and a forfeiture of the bail is entered by the court and then he fails to return within 30 days he becomes guilty of a crime.

What is the purpose of the 30 days?

Mr. POFF. I suppose that would be a period of grace.

Mr. JONES. Under your bill, after a man jumps his bail and fails to appear at the given time and his bond is forfeited, if he comes back within a week he has committed no additional crime?

Mr. POFF. That is true.

Mr. JONES. If he waits 31 days he would violate the law you are proposing here.

Mr. POFF. That is right.

Mr. JONES. I am just seeking information.

Mr. POFF. Well, my only thought, Mr. Jones, is it would be a period of grace. There might be certain extenuating circumstances. It is a period of gratuitous delay. It would be satisfactory to me if it were eliminated.

Mr. CURTIS. If there were extenuating circumstances, the delay would not be willful. Wouldn't the word "willfully" cover any such delay?

Mr. POFF. I think that is true. The word "willfully" is in the bill and is a *sine qua non* to conviction.

Mr. Chairman, may I introduce at this time, Mr. Martin Richman, of the Criminal Division of the Department of Justice.

Mr. McCULLOCH. Thank you very much for your presentation, Mr. Poff. We will be glad to hear Mr. Richman if that is the order in which you prefer to testify.

STATEMENT OF MARTIN RICHMAN, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. RICHMAN. Mr. Poff has really covered most of the reasons why the Department of Justice favors this bill. One thing I might mention, though, is that there is another jurisdiction; namely, the State of New York which has a bail-jumping statute making it a crime to jump bail. The 30-day period is, I believe, in the statute of New York State.

Mr. JONES. That alone does not make it good or bad. But what is the reason for the 30 days?

Mr. RICHMAN. I believe Congressman Poff stated the reason for such a period. It is a period of grace before a criminal penalty. We are here imposing a criminal penalty and in order to make it entirely clear when a person is charged with the proposed crime that it is a willful violation, we have provided for the 30-day period.

Mr. JONES. Of course, you would still have to prove it was willful if he stayed away 50 days?

Mr. RICHMAN. Yes, sir.

Mr. JONES. And he could come in and offer evidence and show he was sick or confined somewhere else in prison to get around the willful angle of it.

Mr. RICHMAN. You are entirely correct, sir. And that may be a point on which the bill could be changed with a view to improving it to the greatest possible extent.

Mr. POFF. If I may interject—the punishment and grading of the punishment are thus identical with the escape statute in title 18, United States Code. I do not know whether the 30-day period is part of that statute or not.

Mr. JONES. I am seeking information. I have no opinion on the matter, as yet. I am just trying to explore it to see the reason for the 30-day period.

Mr. RICHMAN. I do not think I can add anything to that. New York has a similar statute, and the 30-day provision is there. I do not know whether Congressman Poff has anything else to add.

Canada has a law on the subject the text of which I have if you wish to have it made available to the committee.

You may be interested in the fact that the New York statute was enacted in 1928 and it was the result of a recommendation by a State crime commission in that State, and I think it might be helpful if I furnished you with the brief recommendation that the commission made in proposing it.

Mr. McCULLOCH. We will receive it for the record. You may file any further oral statement or anything else you have with it.

(The recommendation referred to is shown following Mr. Richman's oral testimony.)

Mr. RICHMAN. I think the Congressman in his remarks has covered the desirability of his bill very well and I have nothing further to add.

Mr. McCULLOCH. Thank you very much, Mr. Richman.

One question, just to make the record clear.

You are here in favor of this legislation?

Mr. RICHMAN. Yes, sir.

Mr. McCULLOCH. And do you come with the approval of the Department of Justice?

Mr. RICHMAN. I am here with the knowledge and approval of the Department of Justice and the Attorney General, and so is my colleague, Mr. Maroney.

Mr. MECARTNEY. I might state for the record that the Speaker of the House of Representatives received a communication from the Attorney General requesting that this legislation be introduced. That communication was referred to the committee on the Judiciary.

Mr. McCULLOCH. And, of course, that communication will become part of the record.

(The communication referred to appears following Mr. Richman's oral testimony.)

(Supplied for record by Mr. Richman:)

New York State has a law which makes bail jumping a criminal offense. It was enacted in 1928 as a result of a recommendation of the New York State Crime Commission. In recommending that statute the New York State Crime Commission declared:

"In order also to remedy the abuse of jumping bail which often happens when a criminal finds that he is likely to be convicted and where he would rather take a money loss than stand a long term in prison, it is suggested that following the practice which prevails in Canada and on the analogy of treating the jumping of bail as similar to an escape from prison—the prisoner pending his trial is technically in the custody of the State—it is proposed that the jumping of bail shall be made a crime in itself. At the present time the sole consequence to the bondsman is the forfeiting of the bond and as most bail is now furnished by surety companies, and as there is generally a sufficient collateral insisted upon by those companies to protect them in such an event, it therefore means that the criminal who desired to escape the jurisdiction has in effect bought his way free.

"To put an end to this it is proposed to make the act of jumping bail a crime * * *."

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., March 25, 1954.

The SPEAKER,
House of Representatives,
Washington, D. C.

DEAR MR. SPEAKER: Attached for your consideration and appropriate action is a legislative proposal to amend title 18 of the United States Code so as to make it a criminal offense to jump bail.

Present law provides for the admission to bail of persons indicted for or convicted of criminal offenses in courts of the United States. It also permits local courts and magistrates to admit to bail for trial in courts of the United States persons brought before them for offenses against the United States. Likewise, witnesses in criminal proceedings may, under certain circumstances, be required to give bail for their appearance.

Persons admitted to bail either as parties or witnesses in criminal proceedings sometimes fail to appear as required, electing, in effect, to forfeit their bail in exchange for their freedom. Illustrative of such occurrences is the rather recent experience of four of the convicted Communist defendants in the case of *Dennis et al. v. United States* (341 U. S. 494), who were at large under bond pending appeal and certiorari and who failed to surrender after the affirmance of their convictions.

The attached proposal would amend chapter 207 of title 18, United States Code, relating to bail. It would add to the chapter a new section designated "3146" and entitled "Jumping bail." You will note that the proposed section is modeled after the escape statute, section 751 of title 18, in that the seriousness of the offense of bail jumping and the punishment provided therefor are both made dependent upon the seriousness of the substantive offense to which the bail was related and upon the further circumstance of whether the bail was given in connection with a criminal charge or on appeal from a conviction.

The early introduction of this measure is requested as a further step toward the improvement of the administration of criminal justice.

The Bureau of the Budget has advised that there is no objection to the submission of this recommendation.

Sincerely,

HERBERT BROWNELL, Jr.,
Attorney General.

Mr. McCULLOCH. We will now hear from Mr. Maroney of the Internal Security Section, Criminal Division, Department of Justice.

STATEMENT OF KEVIN T. MARONEY, INTERNAL SECURITY SECTION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. MARONEY. I had come prepared to illustrate primarily the need for legislation such as this by pointing out the cases involving the Communist Party officials who were leaders of the Communist Party and who jumped bail while their cases were on appeal. I think these cases have been adequately covered in the statement of Congressman Poff.

Principally, the four defendants in the Dennis case and in the case of Gerhard Eisler are the outstanding cases.

The only added comment might be that in the Dennis case the bonds on each of the four bail-jumpers was \$20,000 which was thought, apparently, by the Communist Party not a sufficient deterrent to the appearance of these four leaders—\$80,000 in all.

We feel that the forfeiture of bail money alone is often insufficient to guarantee the appearance of a defendant and that a statute such as this is necessary and desirable.

Mr. McCULLOCH. You are speaking with the knowledge, consent and approval of the Department of Justice on this matter?

Mr. MARONEY. Yes, sir.

Mr. MECARTNEY. I think the witness has a more complete statement which could be inserted in the record to supplement his testimony.

Mr. McCULLOCH. The statement may be filed in the record.

Mr. MARONEY. If I might make the observation, the statement I have prepared is in rather rough form and if I could be permitted to get a more formal statement—

Mr. McCULLOCH. You will be permitted to redraft your statement. Are there any other witnesses?

Mr. JONES. That is what we call revising and extending a statement.

Mr. McCULLOCH. We thank you very much, Congressman Poff, Mr. Richman, and Mr. Maroney.

The subcommittee will now adjourn and will later consider these matters in executive session.

(Note: The formal statement submitted by Mr. Maroney follows:)

STATEMENT OF KEVIN T. MARONEY, ATTORNEY, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

In illustration of the necessity for this legislation (H. R. 8658) we respectfully present for your consideration a few examples where defendants in criminal cases have jumped bail. The instances involve officials of the Communist Party who were convicted of serious offenses and who thereafter fled while under bail.

But because these illustrations are limited to flight by Communist Party leaders it should not at all be taken to indicate that the legislation is needed only in subversive cases. The proposed statute is necessary, in the opinion of the Department of Justice, as more effective deterrent to unlawful flight by any type of criminal, be he a narcotics agent or an espionage agent. We have selected the following examples because they are timely as well as notorious.

Probably the Dennis case, which you will recall was tried in New York City by Judge Medina in 1949, most conclusively demonstrates that the threat of forfeiture of bail money alone is all too often insufficient to guarantee a defendant's appearance in court when required. It must also be remembered that in many instances the threat of forfeiture of bail money is hardly a deterrent at all, since the bail may have been posted by a professional bondsman, who as a practical matter, will suffer the monetary loss in the event of a forfeiture.

However—to return to the Dennis case—11 national leaders of the Communist Party were convicted. The convictions were affirmed by the United States Supreme Court on June 4, 1951. On July 2 of that year, when the defendants were scheduled to surrender to begin serving their sentences, four of the defendants failed to appear. Their bonds of \$20,000 each were, of course, forfeited. But it is obvious that the leaders of the Communist conspiracy in this country had decided that the freedom of these four professional revolutionaries was worth the loss of \$80,000.

The four fugitives in the Dennis case were Robert G. Thompson, Gus Hall, Henry Winston, and Gilbert Green—all members of the national board of the Communist Party, the highest governing body of that organization. Winston and Green are still at large.

Gus Hall was the first of the four to be apprehended. He was arrested at Laredo, Tex., on October 10, 1951. In June 1949, Hall had light hair and a mustache, and was heavier in weight than at his trial. When he was apprehended 3 months later on the Mexican border his hair was dyed dark brown, his mustache had been removed, and he weighed 20 pounds less.

The Communist Party's efforts to effect the escape of Thompson are even more striking. Thompson was not apprehended until August 27, 1953, when he was located by special agents of the Federal Bureau of Investigation in a remote hideout in the Sierra Nevada Mountains of California. Thompson had made extensive efforts to change his identity to that of one John Francis Brennan. At the time of his arrest he carried with him numerous identification cards, including driver's license and social-security card, issued in the name of Brennan. He had changed his physical appearance by growing a mustache and by dying his hair, eyebrows, and mustache a strawherry blond.

Arrested with Thompson at the Twain Harte, Calif., cabin were four other Communist Party members including Sidney Steinberg. Steinberg was one of 21 Communist Party officials who were indicted in June 1951 (following the Supreme Court decision in the Dennis case) for conspiring to teach and advocate the overthrow of the Government by force and violence. At the time this indictment was returned, Steinberg and three of his codefendants (Fred Fine, James E. Jackson, Jr., and William Norman Marron) had disappeared. Fine, Jackson, and Marron (all of whom are alternate members of the national committee of the Communist Party) are still at large.

Another outstanding example of a Communist fugitive is that of Gerhardt Elsler, for whose freedom the party was willing to forfeit a substantial amount of bail.

These are but a few examples, but all have occurred within a period of 3 or 4 years. And, in the judgment of the Department of Justice, they illustrate the need for H. R. 8658, making it a crime to jump bail.

(Whereupon, at 11:50 a. m., the subcommittee adjourned.)

MAKING BAIL JUMPING A SEPARATE CRIME

TUESDAY, MAY 18, 1954

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 4 OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met in an adjourned meeting at 10 a. m. in room 346, House Office Building, the Honorable William M. McCulloch (chairman of the subcommittee) presiding.

Mr. McCULLOCH. We will come to order. We will proceed on H. R. 8658, a bill to amend title 18, United States Code, to provide for the punishment of persons who jump bail.

Mr. Rogers, have you any questions which you would like to ask concerning this bill?

Mr. ROGERS. Yes, I do.

On line 10, where it states "incurs a forfeiture of bail," what I would like to know is what is your understanding of what constitutes a forfeiture of bail.

By that I mean this: If a man is bound over or appears before a United States commissioner and signs a bond for his appearance before the commissioner; and then when he fails to appear would that constitute a forfeiture under this bill or is it necessary for the United States commissioner then to certify it to the clerk of the court and the judge himself make the forfeiture in order to create a forfeiture as provided in that provision?

Mr. POFF. It is my understanding that in all such bonds there is a provision that failure to appear at the designated time will work a forfeiture.

However, as a matter of procedure, I believe the commissioner, or the Federal judge, as the case may be, must certify that forfeiture to the clerk.

That being true it would be my feeling that the forfeiture would become effective as of the date of the certification to the clerk and the order of the court.

Mr. ROGERS. In other words, suppose I was to appear before the United States commissioner today at 10 o'clock. I fail to appear at 10.

The provision of that bond would require the United States commissioner to forfeit it?

Mr. POFF. That is right.

Mr. ROGERS. He would declare it forfeited at that time?

Mr. POFF. Yes.

Mr. ROGERS. Would I be guilty 30 days thereafter of a crime under this law? Or must we wait after he has declared the forfeiture, certified it to the court, and the court in turn certified it to the clerk, and the court in turn enters a judgment of forfeiture?

What I am trying to figure is when does the crime become a crime? When is the crime committed?

Mr. POFF. In my judgment and in our intent the crime would be inchoate, so to speak, from the date the judge enters the order on the certification to the clerk, and would not mature until the 30 days after that act had expired.

Mr. ROGERS. We will have two situations there. Sometimes a man may be indicted by a grand jury and he posts a bond before the United States Commissioner for his appearance in court. Whenever he appears in court the judge brings about the forfeiture; that is, he says the man failed to appear and "I forfeit his bond." He certifies that to the clerk.

Mr. POFF. That is right.

Mr. ROGERS. In that instance no doubt there would be incurrence of a forfeiture?

Mr. POFF. That is right.

Mr. ROGERS. The proposition I am trying to get at is this: Suppose a man was arrested by the United States marshal, taken before a Commissioner, before any indictment has been returned, suppose just upon a warrant that the United States attorney has caused to be issued, and he appears, makes a bond, and agrees to come in a week hence and demands a preliminary hearing. He does not appear at the preliminary hearing.

Then 30 days thereafter under this bill would he have committed a crime, or must we wait until he has certified that to the clerk and the clerk in turn gave it to the judge, and would the day that the judge entered the forfeiture, would that be the day you would start from so far as the 30 days are concerned? That is the point I am trying to get clear in my mind.

Mr. POFF. I will say to the gentleman that a point similar to that actually has arisen. I will yield to Mr. Richman to make a reply to that.

Mr. RICHMAN. That point has come up in the Department, sir. It has been our opinion for a number of years that where the defendant fails to appear before the United States Commissioner the procedure has been that the United States Commissioner will not order the forfeiture. He certifies to the court, as you said, sir, that the defendant failed to appear on the day on which he ordered him to appear.

Then the actual forfeiture is ordered by the court, because the Federal Rules of Criminal Procedure, specifically rule 46, which provides for the forfeiture of bail, provides that the district court shall declare a forfeiture of the bail. We interpreted that to require the Commissioner to certify the facts to the court so that the court may order the forfeiture, and then the time starts to run.

Mr. ROGERS. That then raises the next question on line 9. You say, "before any United States Commissioner."

If the United States Commissioner cannot actually incur the forfeiture as provided by the Rules of Criminal Procedure because it must be certified to the judge, would there be any objection to taking out the words "United States Commissioner" and put there instead "court of the United States"? Because, according to your answer, before a forfeiture could be incurred it must have been certified to the judge and he in turn forfeits it.

Mr. POFF. May I reply to that, Mr. Chairman?

Mr. McCULLOCH. Yes, certainly.

Mr. POFF. I believe from my interpretation of the language that might not be necessary because the language is "having been admitted to bail for appearance before any United States Commissioner or court of the United States." That language does not say that the Commissioner shall declare the forfeiture. It just states that if he fails to appear, then the normal procedure under rule 46 will prevail and the district court will declare the forfeiture and the time then will begin to run from that instant, as I understand it.

Mr. ROGERS. Then that leads to the next question. Of course, in the District of Columbia we have the dual system. Would this bill cover the instance of the United States Commissioner?

First I might ask this question: On traffic violations in the District of Columbia, when a man posts a bond, does he post a bond before the United States Commissioner, or would that be covered in this case?

Mr. MARONEY. In the District a man charged with a traffic violation would not appear before the United States Commissioner but would appear in the municipal court for the District.

Mr. MEADER. Is that a court of the United States?

Mr. MARONEY. No, sir. It is a court of the District of Columbia. It would not be classed as a court of the United States.

Mr. ROGERS. Let us go one step further. Suppose he was charged with burglary, which would be a felony, and he had to post a bond. Does he have to appear before a United States Commissioner for it, or who handles it in the District?

Mr. MARONEY. He would not have to be in the District of Columbia. He would not have to go before the Commissioner. He could be brought either before the United States Commissioner or before a judge of the municipal court who in certain cases acts as the magistrate and may bind him over for grand-jury action.

Of course, if a person were charged with, say, robbery or house-breaking and were taken before a judge of the municipal court here in the District, and he were bound over for the grand jury, he would make his bond on that charge in district court.

Mr. MARONEY. So that I think he still would come within that; in other words, if he forfeited that bond, he still would come within the provisions of this statute.

Mr. ROGERS. The main thing we are trying to get at is: As the District of Columbia, and on some military reservations and national parks, we have United States Commissioners.

A warrant may be issued for a man's arrest. After a warrant is issued and the man is arrested, does he, as applied to the District of Columbia, have a right to have a preliminary hearing to ascertain whether or not he should be bound over to the grand jury, as an example? Does he have that right as we do in the States?

Mr. MARONEY. Yes, sir; he does.

Mr. ROGERS. Having that right, that is usually conducted by a municipal judge or is it conducted by the United States Commissioner?

Mr. MARONEY. It is conducted here by either.

Mr. ROGERS. Would it be possible under this bill for a man appearing before a municipal judge, had his preliminary hearing and post a bond, that upon that bond being forfeited that he would be subject to the conditions of this act?

Mr. MARONEY. He would, because if he were held by the municipal court judge and bound over for action of the grand jury, he would make his bond in the District court.

Mr. ROGERS. The District court?

Mr. MARONEY. Yes.

Mr. MEADER. Would you yield at that point?

Mr. ROGERS. Yes.

Mr. MEADER. Suppose appearance is not before the District court or the grand jury, but for examination or preliminary hearing by the municipal judge at some future date.

If I understand your earlier answer correctly, that would mean that that jumping of that bond would not be an offense under this bill because the municipal court is not a court of the United States?

Mr. MARONEY. That would be correct except that I would like the opportunity, if possible, to conduct a check on the statutes regarding the municipal court of the District of Columbia as to whether or not it is a court of the United States within the meaning of certain statutes. It is an unusual situation which we have here in the District.

Mr. ROGERS. That is what I was getting at. We could envision some possible conflict. Of course, then we wanted to be sure about the traffic tickets.

Mr. MEADER. Would the gentleman yield further on that point?

Mr. ROGERS. Yes.

Mr. MEADER. I know that at least in my State of Michigan, the way you pay a fine for a traffic violation is by jumping the bond. The ticket you get is posting \$1 for appearance at a trial. You simply pay the dollar and forget about it.

A speeding violation or a parking violation in the District of Columbia might be handled in the District in the same way it is in my State. I don't know whether that is so or not.

Certainly if that is the case, you wouldn't want people subjected to these terrific penalties of \$5,000 or 5 years for a traffic violation by jumping his bond and simply paying his fine, which is what he thought he was doing.

Mr. POFF. I may misunderstand the problem altogether, but it has been my opinion that any court created by an act of Congress is a court of the United States within the legal definition of that phrase. I may be mistaken.

Mr. ROGERS. Actually any court, as I understand it, in the District of Columbia is created by the Congress. That is one of the things that perturbed us in this situation; because, just as Colleague Meader pointed out, in some places they think "we will post a bond and that is all there is to it." If you don't appear that is the end of it. We didn't want to get it into a hiatus here.

Suppose I become a persistent violator of getting overtime parking tickets, or suppose I was arrested for speeding and didn't show up. The officers rightly say "Let us get a warrant out for this man and bring him in here."

So they get out a warrant for me. I go down here and post my bond.

Then I don't show up. I want to know if my failure to show up will subject me to a penalty of a year or 5 years and \$5,000?

I think the question of the District of Columbia and how it should operate, if you gentlemen would work that out as a matter of a state-

ment for us, that would simplify that part of it. Then if possible take the question of national parks where the Government may have some jurisdiction, I don't think it is exclusive, where they have United States Commissioners, where a man may have violated some rule or regulation which may come before the Commissioner of that particular park.

As an example, take Estes Park in my State. We have a resident commissioner who handles a lot of work up there. A lot of it, of course, is violations and misdemeanors. He takes care of posting of bonds. I would like you to take care of that phase of it. I have in mind reference to highways and other regulations.

Mr. POFF. I was about to suggest, Mr. Chairman, that if the committee cared for us to do so Mr. Maroney could step to the telephone and possibly clear up that point while we are in session.

Mr. McCULLOCH. If I might make this suggestion: I think Mr. Rogers' solution of the problem which has been raised here this morning in its various ramifications can best be answered by a written statement which will become part of the record; because, as has been so clearly pointed out, these very pointed questions are going to be asked on the floor of the House, if and when this bill gets there.

We want an answer that is without equivocation and to which we can point with authority.

Mr. POFF. Yes, sir.

Mr. McCULLOCH. Is that agreeable?

Mr. ROGERS. Yes, so we can take these statements, file them and make them part of the record so there will be a clear explanation.

Mr. POFF. Very well.

Mr. ROGERS. If I may proceed further?

Mr. McCULLOCH. Yes, that is why we are here this morning. We want this matter in proper shape and form so we can meet every question and every argument that is presented on the floor.

Mr. ROGERS. On line 10, where you state "incurs a forfeiture of bail and willfully fails to surrender himself within 30 days," do you figure the word "willfully" also includes "knowingly and unlawfully"?

The word "willful" usually implies that you did something with full knowledge and acquiesced in the thing which you did.

Would there be any objection, as many times the wording of criminal statutes is "unlawfully, knowingly and willfully"—what is your theory on, first of all, the word "willfully"?

Mr. POFF. As it is apparent in the bill, I would have no objection to the inclusion of those further words because, as I interpret the word "willful" in a criminal statute it includes the connotation of those other two words. I believe it would be incumbent upon the prosecutor, the district attorney, to establish by a preponderance of the evidence that his failure to appear was willful and intentional and with the purpose of avoiding any possible prosecution or the punishment of any conviction of a criminal offense.

Mr. ROGERS. Of course you assume his failure to appear is for that purpose?

Mr. POFF. Yes.

Mr. ROGERS. You would have no objection if we put "knowingly and willfully" in there?

Mr. POFF. I have none whatever, because I take the word "willful" to include that, anyway.

Mr. ROGERS. You state "30 days after he has willfully incurred the forfeiture."

Can you give any particular reason why you give the man 30 days within which to come in?

Mr. POFF. I will say to the gentleman that that is an arbitrary period of time. The sole purpose for including it was to grant a period of grace.

It was the thought of the Department that they would not want to unduly load the district attorney with a lot of frivolous cases to thrash out for which there might be an altogether justifiable reason for a temporary delay on the part of the defendant.

We feel that if the 30-day period is included, it will help to establish a presumption of willfulness and the intent to avoid justice.

We are not wedded to that clause at all. If the gentlemen of the committee feel it should not be there we would have no objection to its exclusion.

Mr. ROGERS. We were discussing the question of a man who stayed out 29 days after his bond was forfeited. Under this law if he came in at the end of 29 days he hasn't committed a crime.

If he stays out 2 days longer he has.

It is a question of whether 1 day or 30 days should be any part of it or not.

The prosecution would have to establish 30 days before he could show a crime was committed.

Mr. POFF. I will say to the gentleman with respect to that that it is possible, of course, for the judge to issue in addition to the bond, an order compelling the defendant to appear on a certain day, and if he fails to appear on that day certain he not only forfeits his bond but is subject to a contempt citation and the court can punish him for contempt on the 29 day. Failing in such an order he could not punish him at all unless and until the 30 days had passed and it had been proven that his failure to appear was willful.

Mr. ROGERS. That is all I have, Mr. Chairman.

Mr. MCCULLOCH. Mr. Meader?

Mr. MEADER. I would like to ask whether or not the law at present makes provision for the apprehension of a person who has jumped bail and the continuation of the prosecution of the case?

Mr. POFF. Mr. Chairman, it is my understanding, of course, that any time a bail is forfeited the defendant is subject to apprehension on a warrant. Should he be returned to the court he could be dealt with in a number of ways, depending entirely on what the court had done when he was recognized over.

If the court, in addition to requiring the bond, had issued an order requiring his appearance on a day certain, then upon apprehension the court could punish him for contempt.

Failing in that, however, he could not punish him at all under the law as it now exists. That is one of the reasons for this statute.

Mr. MEADER. But after the apprehension of one who had jumped his bail the prosecution could proceed with the offense with which he was originally charged?

Mr. POFF. Yes, sir. It is my understanding he could. If he were under bail awaiting certiorari and were apprehended, he could be restored to custody.

Mr. ROGERS. Would you yield there?

Mr. MEADER. Yes.

Mr. ROGERS. When a warrant is issued for an individual and a marshal serves it, he posts a bond—that warrant has served its purpose.

I think what the gentleman from Michigan had reference to is this: That upon a bond being forfeited what process is there then used by the United States Government to direct the marshal to again arrest him?

Is the warrant then issued by the judge, his direction, or what authority has the marshal to take the man in custody thereafter?

Mr. MARONEY. At the time of the forfeiture the court will issue a bench warrant.

Mr. ROGERS. All right.

Mr. MEADER. In addition to the fact that the defendant can be apprehended and the prosecution can proceed, he also suffers damage in the sense that he loses whatever penalty on the bond may be. Is that correct?

Mr. POFF. Yes, sir.

Mr. MEADER. If there is a \$5,000 cash bond for his appearance he loses the \$5,000?

Mr. RICHMAN. Yes, sir.

Mr. MEADER. Have there been a number of cases of bail jumping which demonstrate the need for this new legislation, making it a crime to jump bail?

Mr. POFF. Yes. The case which more than any other case gave rise to this bill was the case of *Dennis, et al., v. The United States*, in which four convicted Communists, Dennis, Gus Hall, Henry Winston, Gilbert Green, and Robert Thompson had posted a \$20,000 bond each awaiting certiorari, after which they were liberated and absconded.

Two of them have been apprehended. The other two are still at large.

Of course the \$80,000 was posted by the Communist Party or its affiliates, and money is no object to them in the protection of their high ranking party officials.

Another case in point was the case of Gerhardt Eisler who was convicted of perjury in connection with a statement made on his passport. I believe his bond was something over \$20,000.

You will remember that he stowed away on that Polish boat, the *Batory*, and went to England. They tried to extradite him from England but because of the provisions of some treaty they were not able to extradite him and he finally succeeded in escaping behind the Iron Curtain and arose to some prominence in the Communist Party in East Berlin and recently was deposed.

Mr. MEADER. In the case of Eisler apparently the offense under which he was charged was not an extraditable offense. Is that right?

Mr. POFF. Not under the treaty with England.

Mr. MEADER. Would this bail jumping be an extraditable offense or would we have to amend our treaties to make that an extraditable crime?

Mr. POFF. I don't know the answer to that. I will yield to either of these gentlemen who might know.

Mr. RICHMAN. I doubt if bail jumping is an extraditable offense under existing treaties. It may depend upon the original offense for which a man posted bail to determine whether or not he could be extradited.

Mr. MEADER. Then passing this statute would not gain us anything so far as the Eisler case is concerned?

Mr. RICHMAN. Insofar as that particular case is concerned that seems to be correct if my understanding is correct about Eisler not being able to be extradited for the proposed crime of bail jumping.

Mr. MEADER. In the Dennis case which Mr. Poff mentioned, 2 of the 4 defendants have been apprehended and presumably punished, or at least held in custody. The other two are still at large, but I presume there is a bench warrant out for them, is there not?

Mr. MARONEY. That is correct, yes.

Mr. MEADER. They could be apprehended on that bench warrant as easily as they could be on a warrant issued under this statute if it were now law?

Mr. MARONEY. Yes, sir.

Mr. MEADER. What would be gained, then, in those cases by adoption of this bill?

Mr. POFF. I might suggest to the gentleman that it might operate as a deterrent to future defendants who might be tempted to jump bail.

They know now they could jump bail with impunity so far as punishment for an additional offense is concerned, and in the absence of a direct order by the judge compelling him to appear on a day certain, which would give the court the right to punish for a contempt, he could jump bail with absolute impunity.

Knowing that in advance he might be the more tempted to jump bail. But with a statute of this nature on the books it might act as some deterrent.

Mr. RICHMAN. There is this consideration, too, sir: You establish an additional Federal crime by the fact of making bail jumping a crime.

At that point you can reintroduce the FBI into the picture because the charge of violating another crime is immediately brought to the attention of the Department. You go to work on that separate crime and get the FBI searching for a violator of one of the sections in the Criminal Code, the bail jumping section, whereas in the case of the bench warrant that would be a question of the marshal enforcing the mandate of the court.

I think you get the additional enforcement, a greater search out after the man.

I am not suggesting that the FBI may have relinquished it entirely by the fact that the man posted bail and may have gotten ready for trial, but you have another factor brought in by the charge of an additional crime.

Mr. MEADER. Am I to understand that these two defendants in the Dennis case who are still at large are not being searched for by the FBI now?

Mr. MARONEY. Absolutely not, sir.

Mr. MEADER. You mean the FBI washes its hands of a case——

Mr. MARONEY. I thought your question was: Are you to understand there is no longer a search? My answer was that that is not so.

Mr. MEADER. FBI is looking for these defendants?

Mr. MARONEY. Very much so, yes.

Mr. MEADER. There is nothing to prevent the FBI from cooperating with the marshal and searching for a bail jumper without any statute, is there?

Mr. POFF. Not so long as he is a Federal defendant.

Mr. McCULLOCH. I take it you mean that the divided responsibility therefore results in the FBI not being as interested in pursuing a bail jumper as it is in pursuing a person who may be suspected of or charged with a crime in the first instance?

Mr. RICHMAN. Exactly, sir.

Mr. McCULLOCH. If we create this additional crime there is again the primary responsibility on the FBI, there is no divided responsibility with respect to that offense, and again the FBI with its tireless ability starts more diligently searching for the man?

Mr. RICHMAN. Yes, sir.

Mr. CURTIS. May I bring in one point?

Mr. McCULLOCH. Yes.

Mr. CURTIS. Is it not a fact that a good many Federal crimes are prosecuted by, say, the post office inspectors, and the FBI might not be in the picture at all until the additional crime of bail-jumping had been committed?

Mr. RICHMAN. That is definitely another argument, sir. There are many such crimes where the FBI does not have jurisdiction and will not take jurisdiction, but at the point of the bail jumping the FBI will come into the picture.

As the chairman said, we have this tremendous enforcement arm searching for the bail jumper.

Mr. McCULLOCH. Mr. Meader, I interrupted you. Please proceed.

Mr. MEADER. Are there any precedents for this bill in State laws?

Mr. RICHMAN. There is one State, sir, which has a very similar law, the State of New York.

That was passed as a result of a recommendation of a New York State Crime Commission. I believe at our prior visit to the committee we submitted to the committee a statement that the crime commission issued at the time it urged the adoption of such a law in New York State.

Mr. POFF. Canada has a similar statute, also.

Mr. MEADER. How long have these other laws been on the books in Canada and New York?

Mr. RICHMAN. The New York statute was passed in 1928.

Mr. MEADER. Do we have any evidence of the experience of the State of New York with respect to this statute?

Mr. RICHMAN. Some evidence that we have as to the extent of the workability or the practical effects of the New York statute is this fact, sir: In the current session of the New York State Legislature an attempt was made to extend the New York statute similar to the extent that the Department and Mr. Poff have recommended; specifically the New York statute did not cover material witnesses who are required to post bond and then fail to show up. It did not make their failure to show up a crime.

In this session of the legislature such a bill was introduced, which would seem to indicate that the rest of the statute in New York was

considered a good thing and they wanted to extend it to cover that situation too.

Mr. MEADER. Did that pass, do you know?

Mr. RICHMAN. I do not know whether that has passed this last session of the New York Legislature.

Mr. MEADER. Mr. Chairman, might I ask if we have any comment from any legal association, the American Bar Association, any comment from other practicing lawyers on this legislation?

Mr. McCULLOCH. I will refer that question to counsel for the committee, Mr. Mecartney.

Mr. MECARTNEY. The only report on this bill is this letter usually referred to as an executive communication, from the Office of the Attorney General addressed to the Speaker under date of March 25, 1954, which was referred to the Committee on the Judiciary, pursuant to which the bill was introduced.

Mr. ROGERS. Does that report in any manner show the number of bonds which have been forfeited and how many apprehensions after forfeiture may have been set aside later?

That is not reflected in that report; is it?

Mr. MECARTNEY. No, sir. There are no statistics contained in this report of the character you designate.

Mr. ROGERS. Addressing my question, then, to the gentleman from the Department of Justice, Do you know whether any statistics have been compiled which would indicate the number who may have failed to appear where the bond was forfeited? Are there any statistics along that line?

Mr. RICHMAN. I don't know whether or not there are. Mr. Maroney and myself do not have any at the present time, sir.

Whether the Department keeps those statistics in a central place or whether they are in the offices of the United States attorneys, sir, I do not know.

Mr. ROGERS. I was wondering if we could look that up or if we could give you that responsibility?

Mr. RICHMAN. Yes, sir.

Mr. ROGERS. And, if so, include the number of forfeitures, and if evidence is available as to how many were apprehended later, give us that, and the number of bonds which may have been set aside.

If we have those statistics it would be well to put them in the record.

Mr. MECARTNEY. Forfeitures?

Mr. ROGERS. Yes, because there is another question I want to ask.

As you know, there are a number of bondsmen or bonding companies who do execute bonds for people charged with crimes.

In many instances they are more effective in locating the defendants because they have other people who give them the information.

Very often if they apprehend the defendant, bring him into court, and they convince the judge of due diligence, he sometimes sets aside the forfeiture.

If that should occur would the man still be guilty of a crime under this statute?

In other words, he is charged with a crime, posts a bond, the bond is forfeited, he has gone past the 30 days. Then he is apprehended.

The judge sets aside the forfeiture.

Is he still guilty of a crime?

Mr. POFF. My answer to that, if the gentleman will yield, would be this: If the court should find just cause for setting the forfeiture aside it would necessarily follow that the prosecution would be unable to establish the necessary willfulness, and for that reason the new crime could not be made perfect under the statute.

Mr. ROGERS. Yes. I was just thinking out loud because I have known of instances where the Federal judge has great confidence in individuals who are in the business of signing bonds, and they are very diligent in producing the defendants in court.

Many times they have disappeared. The bondsmen have gotten busy, although they really intended when they failed to appear not to show that the bondsmen have been successful in getting them back within a reasonable time, and they go into the judge and say "I have the man here, paid all the expenses. Will you set aside the forfeiture so I will not have to pay it?"

I have known of instances where it has been done, not due to any consideration of the defendant but out of the good graces of the bondsman who produced the man.

You feel if the court did set aside that forfeiture, although the 30 days has gone by, that there would be a crime committed or they couldn't conduct the prosecution?

Mr. POFF. Certainly the intent I have in introducing the bill is to make the crime effective upon the expiration of the 30 days after the forfeiture.

If the court for any reason, other than a failure to find willfulness, should set the forfeiture aside, in my judgment that should not have any bearing whatever upon the prosecution of the additional offense.

Mr. ROGERS. The next thing is this: You provide on page 2, first of all you are going at the proposition of making it a crime because they jump bail?

Mr. POFF. Yes.

Mr. ROGERS. On page 2 you in effect say that if he jumped bail when he is charged with a felony his punishment shall be greater. That is, not more than \$5,000 nor more than 5 years.

But if it is a charge of a misdemeanor and he jumps bail, then his punishment is not more than a year or more than a thousand dollars.

The point is this: The thing you are attempting to prevent is bail jumping.

If that is the offense, why make the distinction whether it is a felony or a misdemeanor?

Mr. POFF. I will say to the gentleman that that particular feature of the bill was modeled after the parallel provision in the escape clause, and the reason for differentiating between the punishment in a felony and a misdemeanor in the first instance establishes the same justification, I would think, for differentiating between the punishment in jumping bail to escape that particular punishment.

Mr. RICHMAN. We want to be guided by what Congress thought was wise in that prior statute, which is title 18, United States Code, section 751, punishing escapees.

We thought we would pattern this particular law on that law which Congress had passed.

Mr. ROGERS. Now let us envision this situation: Assuming that a man is charged with murder in all the degrees. In some instances you go all the way from first-degree murder down to involuntary

manslaughter, which constitutes a misdemeanor, at least in some State statutes.

I don't know whether it applies in the Federal court in the same manner or not, but assuming that a man is charged with murder, which is a felony, and he posts a bond. The bond is forfeited; 30 days have gone by.

Later he is apprehended and tried on the original offense. He is then convicted only of a misdemeanor. Then his crime of jumping bond can only be that of punishment of 1 year or \$1,000 if he is convicted of a misdemeanor, although he is charged with felony. What would you say to that?

Mr. POFF. I will have to disagree with your interpretation of what the punishment would be.

If the charge is murder that would be a felony. If he escapes, or rather if he jumps bond before he is brought to trial, the higher and graver penalty would attach as soon as he was apprehended and his guilt of bail jumping established.

It would be immaterial, I should think, if subsequently he were convicted of a misdemeanor because in the original instance his bond was posted after a *prima facie* case on the felony charge had been made, and he would be presumed to have jumped bail with the full knowledge of the existence of the bail-jumping statute.

Mr. ROGERS. Then you would interpret that the posting of the bond itself and the subsequent failure to appear within the 30 days as to whether the bond was to a felony or whether it was to a misdemeanor would make your statute so definite and certain that it would not be subject to some smart criminal lawyer attacking it afterward and saying that the possibilities of the punishment being indefinite and uncertain because you don't know whether it was a felony or a misdemeanor, his subsequent conviction has nothing whatsoever to do with the punishment and it would not be subject to that kind of argument?

Mr. POFF. Exactly. The gentleman made the point well.

The language of the bill is "if the bail was given in connection with a charge of felony."

Mr. McCULLOCH. I would like to inquire whether or not there is any possibility of double jeopardy arising by reason of such proposal?

Mr. POFF. I will speak to that point first if I may.

I think that the legislative body has the right to create as many distinctions of a crime and as many separate parts thereof as it in its wisdom deems necessary.

If this statute becomes law this would be an offense separate and apart entirely from the original charge. As such it could not be subject to the criticism that the defendant was put in double jeopardy for the same offense.

He realizes before he commits either or both of these acts that he will be subject to two separate charges and possibly to two separate convictions.

Having knowledge of that I do not believe that he could successfully make the defense of double jeopardy.

Mr. ROGERS. Assuming that he has posted the bond and a forfeiture is had, and subsequently he is apprehended and acquitted, is he then guilty of bail jumping?

Mr. POFF. I feel he is. Having been under custody and having knowledge, at least allegedly having knowledge of the existence of this statute, and having willfully violated its terms, he has committed a crime even though he is innocent on the first charge, the substantive charge.

Mr. ROGERS. Then that leads back to the question of double jeopardy. The only thing he ever got in court on was the charge of the first instance of which he is subsequently found innocent, but having been found innocent and having jumped the bail, he can now be punished for not living up to all the rules, you might say, of the game when he is charged with it.

That would not constitute double jeopardy in your opinion, would it?

Mr. POFF. I think it would not, if the gentleman pleases, because the 2 separate offenses involve 2 separate frames of mind—2 separate criminal intents.

Mr. ROGERS. That would be somewhat like if a man were charged with a crime and is being tried and he went out and tampered with the jury and the jury acquitted him. He still would be guilty of tampering with the jury.

Mr. POFF. An excellent analogy.

Mr. RICHMAN. Or if a man was being tried and he was contemptuous of the court and was also tried and convicted of contempt of court.

Mr. POFF. In other words, following up what Mr. Richman has said there, even if the man under bond is later proved innocent of the substantive charge, he could be convicted of contempt of court, assuming that the court had established an order for his appearance on a day certain.

Mr. MEADER. I am a little bit concerned about this offense requiring acts outside of those of the person charged.

When the defendant who is required to appear fails to appear, he has done everything that he can do. There nothing further for him to do with respect to having committed an offense, but we have to wait until the judge enters a forfeiture and then wait for a 30-day period.

In other words, certain elements of the offense have to be performed by others than the defendant. It strikes me as being a little unusual.

I wonder if there are precedents in other crimes for the elements necessary to constitute the offense to be contributed by others than the defendant himself?

Mr. POFF. I believe in the gentleman's stated case lies the analogy.

In the case of forfeiture of bond, the offense is not complete and punishable and the forfeiture does not work until the judge entered the order. That consumes perhaps 2 or 3 days, maybe a week. That may not be a very good analogy.

Mr. RICHMAN. There are other analogies, too, Mr. Congressman.

Criminal violations of the tax statutes—those violations are generally dependent upon acts of others, the case being referred by the agency directly involved certifying that the man failed to submit a tax return and having that investigated. The Justice Department depends upon the acts of others to establish certain facts before the fact of the crime is even looked into.

Mr. MEADER. Is that analogous or is the offense itself complete when the man fails to file the return and you are talking about the steps necessary to initiate a prosecution?

Mr. RICHMAN. You are entirely right. That is not directly analogous.

Mr. ROGERS. In other words, what he is getting at is this: You know the fundamental rules which constitute a crime and your statute must be definite and certain. Is it definite and certain enough here because, as you know and we know, the United States Commissioner, for example, enters a forfeiture and then it is certified to the judge, and then the judge incurs the forfeiture as provided by a statute. Then the man has 30 days in which to show up.

What Mr. Meader and I are interested in knowing is this: The acts of other individuals are necessary before the crime is committed.

Is it right and fair and just for a man who fails to appear? His failure to appear on that day certainly doesn't constitute a crime, and becomes a crime only when the Commissioner and the judge do their duties under the statute and then say the forfeiture is had. It is not a crime then until 30 days thereafter.

Would this in the sense that other acts must be performed, other than the acts of the defendant, a statute of certainty and definiteness which depends upon the acts of other individuals to make it a crime so as to meet your test? That is what is bothering us.

Mr. RICHMAN. We believe, sir, those acts are definite and certain enough. The fact of their taking place is a matter of record. The fact that a forfeiture has been entered by a court is a matter of public record, so that it is definite and certain that it has been done.

The passage of 30 days is a definite and certain period of time.

As a matter of fact, those provisions have been inserted largely for the protection of the defendant because, as Congressman Poff indicated originally, we hold no particular brief for the 30-day period. It is an attempt to give that much more consideration to a person who was unable to appear at the original time set for him.

Mr. MEADER. May I ask if you have the New York statute here?

Mr. RICHMAN. Yes, sir.

Mr. MEADER. Is this bill, H. R. 8658, patterned after the New York statute?

Mr. RICHMAN. More or less. I have the text of that statute, sir.

Mr. McCULLOCH. You may read the text.

Mr. RICHMAN (reading):

A person who has been admitted to bail in connection with a charge of felony, and who fails to appear as required, and thereby incurs a forfeiture of his bail, is guilty of a felony if he does not appear or surrender himself within 30 days. A person who has been admitted to bail in connection with a charge of committing a misdemeanor, and who fails to appear as required, and thereby incurs a forfeiture of his bail, is guilty of a misdemeanor if he does not appear or surrender himself within 30 days.

The rest of the statute is aimed at specific sections of the law. I will be glad to read it but I don't think it really adds anything.

Mr. MEADER. You have read the part which is comparable to the bill before us.

Has that New York statute been tested in the courts, Mr. Richman?

Mr. RICHMAN. There have been 2 cases, 2 reported cases under that statute, and I do not recall that the constitutionality of it ever was challenged, at least in those cases the law was enforced.

Mr. MEADER. Do you have the citations of both cases?

Mr. RICHMAN. Yes; *People v. Davis*, which was reported in Fifth New York Supplement second series, at page 411.

People v. Pilkington, reported at 103, New York Supplement, 2d series, at page 66.

Mr. MEADER. Could you give us for the record a citation of the New York statute?

Mr. RICHMAN. Yes, sir. It is section 1694-A of the New York Penal Law.

Mr. MEADER. Do you have the Canadian statute?

Mr. RICHMAN. Yes, sir.

The Canadian statute is section 189 of the Canadian Criminal Code. I regret, sir, that I do not have the text of the Canadian statute at this time.

Mr. McCULLOCH. Along with our other requests, would you please furnish the text of the Canadian statute?

Mr. RICHMAN. Yes, sir.

Mr. MEADER. I would like to see the New York statute at length incorporated somewhere.

Mr. McCULLOCH. If you will quote the New York statute in the written statement which you are to furnish we would be pleased to have it.

Mr. RICHMAN. Yes, sir.

Mr. MEADER. Do you have decisions under the Canadian statute?

Mr. RICHMAN. If there are any I will report them at a later date. I am not familiar with any now.

Mr. MEADER. I wonder if you could also give a little thought to this problem which bothers me of the offense not becoming complete upon the sole act of the person charged but requiring at least ministerial if not discretionary action by others?

If there are precedents for that in our criminal law I think the committee might like to be fortified in the event similar questions are raised on the floor.

Mr. McCULLOCH. Do you have further questions?

Mr. MEADER. No.

Mr. McCULLOCH. Mr. Curtis?

Mr. CURTIS. Enlarging on this discussion, Mr. Chairman, I would like to ask if, without being unduly harsh, we cannot simplify this language and make the crime complete following the action of the criminal defendant in failing to appear?

I ask that because from a short experience as an assistant district attorney it was my impression that failures of defendants to respond to their bail at the proper time is a very serious obstruction to the administration of justice.

I would like to ask you if you would agree with that feeling?

Mr. POFF. Mr. Chairman, if I may be permitted to reply to that?

Mr. McCULLOCH. You may reply.

Mr. POFF. I would be wholly in accord with such a change. However, I would suggest that it would be prudent to retain the requirement that the prosecution prove willfulness.

Mr. CURTIS. Mr. Chairman, I was wondering if the offense couldn't simply be this: Put it in simple language that the defendant has given bail to appear at a certain time and that he willfully failed to appear at that time period. I don't see why that should not be it.

If he later is surrendered I think the district attorney in his wisdom might decide that the offense was not serious enough to bother with very much further. But I do not see why that should not be the offense, what we have just been discussing, provided it is shown that the failure to appear was willful.

Mr. POFF. Yes.

Mr. RICHMAN. The Department would certainly have no objection to such a form of bill, sir.

Mr. CURTIS. Mr. Chairman, further on that subject, we all know that the writing of criminal indictments is a very technical and difficult problem, sometimes almost a scandal. It seems to me there is everything to be said for simplifying the language of a crime so that you would not have to set out in the indictment these various technical matters about incurring a forfeiture and failing to surrender himself, and that might require bringing in the testimony of these outside parties who are also involved in the offense. I would like to keep this thing simple, if we can do it without being unduly harsh.

Mr. ROGERS. Doesn't our present Criminal Code and rules simplify the question of the indictment? About all you have to say is that he did on such and such a day violate such and such a section, period.

I do not think our rules would require that the district attorney, in order to have a proper indictment, would have to say to John Doe that he on such and such a day was required to appear, he failed to appear, and after he failed to appear the United States commissioner forfeited the bond and he certified it to the court, and the man then stayed away for 30 days.

I do not think in order to constitute an indictment it could be quashed at least on motion to dismiss.

I think our new rules—I say new though they have been in effect for 17 or 18 years—I do not think the new rules require us to go through all the rigamarole that we had to before.

Mr. CURTIS. I am delighted to hear that criminal procedure has improved since the days when I had experience with it. I am afraid that dates me a little bit.

Mr. ROGERS. Don't misunderstand me. I concur with your reasoning in the matter.

Mr. CURTIS. But I still do not see any great merit to the 30-day provision. If a person jumps bail he is hindering the administration of justice, and, if we want to make that a crime, why shouldn't that be a crime right there without any 30-day period? I point out further that if he comes in a few days late and shows there were sufficient reasons for it, it is not a willful offense and he is not guilty of the offense.

Mr. POFF. Mr. Chairman, for the purpose of the record, and following up what Mr. Curtis has said, if the committee should decide that the statute should be in that form I might suggest this language for consideration—

Mr. McCULLOCH. If the Chair might interrupt, the Chair would be very happy to have the author of the bill H. R. 8658, together with Mr. Richman and Mr. Maroney, draw an alternate form of bill fully complying with the suggestions of Mr. Curtis, and at our next meeting after we have had the statement from the Department of Justice we will then have all matters before us upon which we can come to a conclusion which will be agreeable.

Mr. RICHMAN. We will be glad to see that that is done, sir.

Mr. McCULLOCH. Do you have any more questions, Mr. Meader?

Mr. MEADER. I just wanted to be certain, Mr. Chairman, that we were going to be educated on this matter of traffic tickets.

Mr. RICHMAN. Certainly.

Mr. MEADER. I wonder if the New York authorities have had experience on that?

Mr. RICHMAN. I will be glad to check on that point, too, sir.

I want to make entirely sure I understand the point that the gentleman made in connection with parks. I am not sure I entirely understood that.

Mr. ROGERS. I think you will find that the Administrator of the Parks has charge of the enforcement of certain rules and regulations and other so-called misdemeanors where the duty of the United States Commissioner is to be the magistrate.

If the United States Commissioner has a bond posted for a misdemeanor and the man failed to appear, would that apply in this legislation?

I think the Departments of Interior, Agriculture, and the Department of Parks could give you the correct rundown of those various crimes.

Mr. RICHMAN. I understand that.

Mr. McCULLOCH. Are there other questions or comments?

(No response.)

Mr. McCULLOCH. Of course the Chair meant to include counsel to the committee among the three who already have been named with respect to drawing an alternative proposal.

We thank you very much, gentlemen, for coming before us again.

Although this bill is a short one I think it is now apparent that it has many ramifications. We want to be sure that we do not miss any possible effects of the proposal.

Again, thank you very much for your testimony.

Mr. MECARTNEY. Not to prolong this unduly, but as an observer here I have been expecting that when we got down to line 6, page 2, the members of the subcommittee would have some questions with respect to the language "or for appearance as a witness."

Mention was made by Mr. Richman of a similar statute coming before the New York State Legislature.

I bring that to the attention of the subcommittee members before this session terminates in the event there are some questions in the minds of the members which they might desire to ask.

Mr. ROGERS. Is there any Federal statute which authorizes the apprehension of a witness with a requirement that they give bail to guarantee their appearance?

Mr. RICHMAN. The Federal Rules of Criminal Procedure, sir, rule 46, subparagraph B, has a provision regarding bail for witnesses where it is considered that the testimony of that witness is material and in order to assure his appearance he is required to put up bail.

Mr. ROGERS. The next question would be this: If a witness were required to post bail, and he did post it, and subsequently failed to appear, is he guilty of a misdemeanor, is he guilty of a felony, or what is the charge to which he has to respond?

In other words, whenever he was required to post a bond to appear as a witness, he was not charged either with a felony or with a mis-

demeanor, but having been required to post a bond under the Rules of Criminal Procedure, and he fails to appear, he has then been brought in under this.

Mr. POFF. I believe that the answer to the gentleman's question is inherent in the nature of the punishment fixed, and that punishment, as it appears on lines 6 and 7, page 2, provides for a \$1,000 fine or imprisonment of not more than 1 year, or both.

The nature of the punishment I believe would classify the offense, as regards a criminal witness, as a misdemeanor.

Mr. ROGERS. When you say "or for the appearance as a witness" you eliminate any question of whether it is a crime, a felony, or a misdemeanor.

Mr. POFF. Yes, sir.

Mr. MEADER. The witness is brought in by a subpoena?

Mr. RICHMAN. Yes.

Mr. MEADER. I presume that the rules now provide for bail only for witnesses in criminal cases. Is that correct?

Mr. RICHMAN. That is my understanding; yes.

Mr. MEADER. There is no such thing as putting a witness under bond to appear in any civil litigation?

Mr. RICHMAN. I am more familiar with criminal procedure than with civil procedure in the Federal courts. I believe you are right, though.

Mr. MEADER. And this would apply only to witnesses in criminal proceedings.

Mr. McCULLOCH. You raise a question which leaves some uncertainty.

Mr. ROGERS. We may ask it in this manner: Suppose in a civil case a witness is very reluctant to appear and you get out a subpoena. Has the judge any authority prior to trial the right to require that this witness post a bond to guarantee his appearance in a civil action?

Mr. POFF. My answer to that would be that I think he has no authority to require him to post bail, but I think that failing to appear on the direct order of the judge would subject that witness to a contempt citation.

Mr. ROGERS. All right. Let us follow it through. Suppose there is a civil case. He doesn't appear. He cites him for contempt and brings him in. Then he says "We cannot take it up today. I am going to put you under \$1,000 bond."

So he posts the bond and leaves the country.

Is he guilty under this statute, this proposed statute?

Mr. POFF. I don't believe that the court would have the authority to require bail of a civil witness under those circumstances.

Mr. ROGERS. But ordinarily we would say he doesn't have the right. He can take a man's deposition and use it. You can serve notice in 24 hours, hurry it up, get an order and take it.

But we are going further in this. He is subpoenaed. I am the attorney and have all the reason in the world to believe he will appear at the day of trial.

He doesn't appear.

Then I go into court and say "I issued the subpoena. The marshal served it. The man didn't get here. Cite the man for contempt, Judge."

Mr. CURTIS. Doesn't he issue a warrant?

Mr. ROGERS. That is what I was going to say. He then issues a warrant and brings him in.

Upon being brought in the judge is busy and he says "We will give a bond." So he gives a bond and then disappears. He has gone past the 30 days and forfeits the bond.

Mr. POFF. In such a case I believe the defaulting witness would himself become a criminal defendant inasmuch as a contempt citation is quasi-criminal in nature and for that reason he would be subject to the statute.

Mr. CURTIS. Before we get to that, let us find out whether there is any jurisdiction for a judge in a civil case to require a bond in such instances. I personally do not believe there is.

Mr. RICHMAN. I don't, either, sir, but that point will be double checked.

Mr. McCULLOCH. Are there other questions?

Mr. POFF. I might suggest that the objection might be cured by inserting on line 6, page 2, after the word "witness" the words "in criminal proceedings."

Mr. MEADER. Can you give us any experience of witnesses jumping bond? Can you furnish us with a foundation to meeting any objections which might be raised on the floor by citing instances where justice has been impeded by witnesses failing to appear after they have been put under bond?

Mr. ROGERS. As I understand it, part of the report they will give us is to include the statistics which they have in that regard, and if they have any glaring examples point them up.

Mr. McCULLOCH. We certainly cannot object to that. They can furnish us with any information which would be helpful in reaching a sound conclusion on this proposal, and such data will be incorporated in the record of this hearing.

If there are no other questions or no other evidence the committee will adjourn its hearing on this bill.

(Committee adjourned at 11:35 a. m.)

(The following supplemental statement was subsequently submitted by the Criminal Division, Department of Justice, and made a part of the record of the hearing:)

DEPARTMENT OF JUSTICE,
Washington, June 28, 1954.

MALCOLM MECARTNEY, Esq.,
Counsel, Judiciary Committee,
House of Representatives, Washington, D. C.

DEAR MR. MECARTNEY: In accordance with our telephone conversation of this afternoon, I am forwarding by special messenger a supplemental statement in relation to H. R. 8658. Also enclosed is a tabulation of bond forfeitures reported by United States attorneys during the first 10 months of the fiscal year 1954, together with a copy of section 189, Criminal Code of Canada.

If we can be of assistance in any further way, please communicate with me.

Very truly yours,

ALAN A. LINDSAY,
Executive Assistant, Criminal Division.

SUPPLEMENTAL STATEMENT IN RELATION TO H. R. 8658 (83D CONG., 2D SESS.), A BILL TO AMEND TITLE 18, UNITED STATES CODE, TO PROVIDE FOR THE PUNISHMENT OF PERSONS WHO JUMP BAIL

At the resumed hearing on May 18, 1954, before Subcommittee No. 4 of the House Committee on the Judiciary on H. R. 8658, certain questions were raised by the committee in connection with this bill, which was drafted in the Department of Justice. It was suggested that a supplemental memorandum be submitted, after further study of the matters discussed.

H. R. 8658 as introduced in the House¹ would amend chapter 207, Bail, of title 18, United States Code, by inserting therein a new section 3146 to read as follows:

"SEC. 3146. Jumping Bail. Whoever, having been admitted to bail for appearance before any United States commissioner or court of the United States, incurs a forfeiture of the bail and wilfully fails to surrender himself within thirty days following the date of such forfeiture, shall, if the bail was given in connection with a charge of felony or pending appeal or certiorari after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or, if the bail was given in connection with a charge of committing a misdemeanor, or for appearance as a witness, be fined not more than \$1,000 or imprisoned not more than one year, or both.

"Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

1. The question was raised whether the prerequisites of a forfeiture of bail and the lapse of a 30-day period following such forfeiture introduce an element of indefiniteness into the measure by making the commission of the offense dependent upon the extraneous acts of third persons, such as the forfeiture order of the court. In this connection, it was also asked whether there are precedents in the criminal law for such prerequisites, and whether it would be better to make the offense complete upon failure to appear at the designated date.

The test of definiteness in a criminal statute was recently restated by the Supreme Court in *United States v. Harris*, decided June 7, 1954, which sustained the validity of the Federal Regulation of Lobbying Act:

"The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."

A person on bail will always know when he is required to appear. The suggested alternative is based upon this hypothesis. The prerequisite of a declaration of forfeiture of the bail introduces no uncertainty, for a forfeiture is automatic. Rule 46 (f) (1) of the Federal Rules of Criminal Procedure provides that "If there is a breach of condition of a bond, the district court shall declare a forfeiture of the bail." Besides, it seems fairer to predicate the offense upon a judicial declaration of forfeiture, which in turn rests upon a finding of a breach of the bond. If the thought behind the question as to the definiteness of the proposed bill is that the offender may not know of the forfeiture, the answer is that he knew of the requirement to appear at a stated time and that a forfeiture would follow his failure to appear. Such knowledge of the notice to appear would have to be shown in order to satisfy the requirement of wilfulness.

The 30-day period allowed for surrender is simply an allowance of a period of grace. The failure to appear at the designated time may have been the result of accident, mistake, or neglect. The grace period was provided in the interest of fairness to allow an excusable period for nonappearance without putting the defaulter to proof that his failure to appear at the appointed time was justified. It is based upon the same considerations which permit a court to set aside a forfeiture "if it appears that justice does not require the enforcement of the forfeiture" (rule 46 (f) (2)). Since the period allowed for appearance is fixed and definite and is for the benefit of the defaulter, we perceive no difficulty of indefiniteness on this score.

The pattern of this bill is a familiar one. There may be instanced in this connection the large body of criminal statutes in which the offense penalized is dependent upon promulgation of regulations by the agency to which power in that respect is delegated by legislative authority. *Panama Refining Company v. Ryan* (293 U. S. 388, 428); *Field v. Clark* (143 U. S. 649). In the *Field* case the applicable principle is stated as follows (p. 694):

"* * * The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. * * *"

See also *United States v. Grimaud* (220 U. S. 506); *United States v. Shreveport Grain and Elevator Company* (287 U. S. 77); *Richmond Hosiery Mills v. Camp* (74 F. 2d 200); *United States v. Goldsmith et al.* (91 F. 2d 983); *United States v. Willard* (8 F. Supp. 356).

¹ A companion bill, S. 3232, was introduced in the Senate on the same date, March 31, 1954.

Our comments on the merits of the bill as against a possible challenge on the ground of indefiniteness indicate as well our views on the suggestion that bail jumping be made a completed offense upon mere failure to appear, without the prerequisites of a forfeiture and a grace period. As requested, however, we submit the following as an alternative:

"Whoever, having been admitted to bail for appearance before any United States commissioner or court of the United States, willfully fails to appear as required, shall, if the bail was given in connection with a charge of felony or pending appeal or certiorari after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or, if the bail was given in connection with a charge of committing a misdemeanor, or for appearance as a witness, be fined not more than \$1,000 or imprisoned not more than one year, or both."

2. (a) The question was raised whether the bill would be applicable to bail jumpers in cases within the jurisdiction of the municipal court of the District of Columbia.

Section 3141 of title 18, United States Code, provides in respect of the "power of courts and magistrates":

"Bail may be taken by any court, judge or magistrate authorized to arrest and commit offenders, but in capital cases bail may be taken only by a court of the United States having original or appellate jurisdiction in criminal cases or by a justice or judge thereof."

Section 3041 of title 18, United States Code, under the same heading—"Power of courts and magistrates"—authorizes, in addition to the State officials named, "any justice or judge of the United States, or * * * any United States commissioner" to arrest, imprison or bail, as the case may be, a person charged with any offense against the United States for trial before "such court of the United States as by law has cognizance of the offense." The United States judge or commissioner must proceed according to rules promulgated by the Supreme Court of the United States, that is, the Federal Rules of Criminal Procedure covering arrest, commitment and bail.

Section 451 of title 28, United States Code, provides that, as used in such title, the term "court of the United States" includes, among others enumerated, "any court created by Act of Congress the judges of which are entitled to hold office during good behavior."

The municipal court of the District of Columbia was established by Congress (act of April 1, 1942, 56 Stat. 190) through consolidation into a single court of the police court of the District of Columbia (criminal jurisdiction) and the municipal court of the District of Columbia (civil jurisdiction). See District of Columbia Code, 1951, section 11-751.

The municipal court of the District of Columbia is a court of record composed of judges appointed by the President, who take the oath prescribed for judges of courts of the United States (secs. 11-952 and 11-953) for a term of 10 years and continue in office until successors are appointed and qualified. Section 11-753 provides in part:

"* * * Each judge shall be subject to removal only in the manner and for the same causes as are now or hereafter provided for the removal of Federal judges * * *."

The municipal court of the District of Columbia has criminal and civil branches, the first of which exercises the same powers and jurisdiction "had or exercised by the Police Court of the District of Columbia" (sec. 11-755 (a)). The criminal jurisdiction so provided is set out in District of Columbia Code, sections 11-602 and 11-606.

Section 11-602 (jurisdiction) provides in part:

"* * * The said court shall also have power to examine and commit or hold to bail, either for trial or further examination, in all cases, whether cognizable therein or in the District Court of the United States for the District of Columbia."

Section 11-606 (powers) provides in part:

"The police court shall have power to issue process for the arrest of persons against whom information may be filed or complaint under oath made and to compel the attendance of witnesses; to punish contempts * * *."

"Every person charged with an offense triable in the police court may give security for his appearance for trial or for further hearing, either by giving bond to the satisfaction of the court or by depositing money as collateral security with the appropriate officer at the said police court, or the station keeper of the police precinct within which such person may be apprehended * * *."

In *United States v. Mills* (11 App. D. C. 500, 507) it was stated:

"* * * The police court of the District of Columbia, * * * although a court of the United States, is not a court of the United States in the sense of the Federal Constitution [that is, a constitutional court under art. 3 as distinguished from a legislative court] and there is no reason for giving to the same expression in a statute a broader meaning than is given to it in the Constitution. In fact, when there is mention of the courts of the United States in any statute, we may certainly assume that only the courts of general jurisdiction intended by the Constitution are meant, unless there is special reason to be deduced from the context of the statute, for giving to the expression a different meaning."

Finally, rule 54 (a) (1) of the Federal Rules of Criminal Procedure makes those rules applicable "to all criminal proceedings in the district courts of the United States, which include the District Court of the United States for the District of Columbia * * *." The dual jurisdiction of that court is pointed out in note 2 to the rule, which states that it "has the same powers and exercises the same jurisdiction as other district courts of the United States in addition to such local powers and jurisdiction as have been conferred upon it by statute" (District of Columbia Code, 1951, sec. 11-305).

Subdivision (2), entitled "Commissioners," of rule 54 (a) provides:

"The rules applicable to criminal proceedings before commissioners apply to similar proceedings before judges of the United States or of the District of Columbia. They do not apply to criminal proceedings before other officers empowered to commit persons charged with offenses against the United States." [Emphasis added.]

The Advisory Committee's notes 2 and 3 to subdivision (a) (2) read:

"Note 2. Justices and judges of the United States as well as United States commissioners, may issue warrants and conduct proceedings as committing magistrates. * * *

"Note 3. In the District of Columbia judges of the municipal court have authority to issue warrants and conduct proceedings as committing magistrates, * * *. *These proceedings are governed by these rules. The municipal court of the District of Columbia is also a local court for the trial of misdemeanors, but when so acting it is not a court of the United States. These rules, therefore, do not apply to such proceedings.* [Emphasis added.]

Since the bill applies only to "bail for appearance before any United States commissioner or court of the United States," we conclude that bail orders of the municipal court for appearance in that court for trial of an offense cognizable before it are not within the bill because the court is not a "court of the United States." However, a bail order of the municipal court for appearance in the district court is within the bill, just as is a similar bail order of a commissioner or other officer authorized to commit a person or admit him to bail for appearances before any district court.

(b) It was also asked whether the bill would be applicable to traffic cases in the District of Columbia, or elsewhere.

Section 25-101 of the District of Columbia Code (1951) provides as follows:

"The attorney for the District of Columbia shall be known as the Corporation Counsel.

"Prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding 1 year, shall be conducted in the name of the District of Columbia and by the Corporation Counsel or his assistants. All other criminal prosecutions shall be conducted in the name of the United States and by the attorney of the United States for the District of Columbia or his assistants." [Emphasis added.]

Section 40-603 of the District of Columbia Code, in the chapter codifying the District of Columbia Traffic Act, 1925, provides in subsection (1) as follows:

"All prosecutions for violations of this chapter, excepting section 40-610 [relating to prohibition of smoke screens] and this act, or regulations made and promulgated under the authority of this chapter shall be in the police court of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants."

In *District of Columbia v. Moyer* (68 App. D. C. 98, 93 F. 2d 527) it was held that by subsection (i) Congress intended that all prosecutions for violations of the District of Columbia Traffic Act, except for the violation of the smokescreen

provision (a felony), should be at the instance of the Corporation Counsel and in the name of the District.

In the exercise of its police court jurisdiction, traffic violators are brought before the municipal court of the District of Columbia, whose judges take turns in presiding over the so-called traffic court in the criminal branch of that court. Traffic regulations with amendments issued in 1953 by the District Commissioners, contain a penalty clause, section 158, which provides that any person violating sections or paragraphs of said regulations wherein a penalty is not specifically provided, "shall on conviction be punished by a fine of not more than \$300 or imprisonment of not more than 10 days or both."

The posting of collateral at the police precinct (sec. 11-606, *supra*) is the usual method of covering the fine imposed, with resultant waiver of court appearance, or the violator may contest the imposition by court appearance. Bail under the District of Columbia Code would be obtainable only if the traffic violation was ignored or the violation involved such offenses as negligent homicide, reckless driving, or driving while intoxicated. See sections 19 to 21, inclusive, of Traffic Regulations, which are punishable as misdemeanors under the District of Columbia Code (secs. 40-606; 40-609 (b)). Rule 9 of the rules of the municipal court for the District of Columbia covers bail as generally procurable in that court.

In view of these provisions, and the discussion under (a) above, the conclusion is clear that traffic violations within the District of Columbia would not come within the purview of H. R. 8658.

(c) In respect of the question as to the applicability of the bill to violations of national park regulations, chapter 430 of title 28, U. S. C. (secs. 631-639), deals with United States Commissioners, who include commissioners for the several district courts of the United States, and national park commissioners. (sec. 631.) Section 632 then provides:

"Each national park commissioner shall have all the jurisdiction and powers of a United States commissioner and of a commissioner specially designated to try petty offenses within such national park pursuant to section 3401 of title 18. He is also authorized to try and determine complaints in proceedings for penalties and forfeitures prescribed by law for violations of statutes or regulations respecting such park.

"The practice and procedure for the trial of cases before national park commissioners and for taking and hearing of appeals to the district courts shall conform to rules promulgated by the Supreme Court pursuant to section 3402 of title 18."

Section 637 of title 28, U. S. C., provides that "United States commissioners may administer oaths and take bail, acknowledgements, affidavits and depositions." (Emphasis added.)

Section 3401 of title 18, U. S. C., is the "petty offenses" statute. It provides in subsection (a) as follows:

"Any United States commissioner specially designated for that purpose by the court by which he was appointed has jurisdiction to try and sentence persons committing petty offenses in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction, and within the judicial district for which such commissioner was appointed.

Provision is made in subsection (b) of section 3401 for election by any person charged with a petty offense to be tried in the district court of the United States. In subsection (c) of section 3401 it is provided that—

"This section shall not apply to the District of Columbia nor shall it repeal or limit existing jurisdiction, power, or authority of commissioners appointed for Alaska or in the several national parks." [Emphasis added.]

Section 3402 authorizes appeal from a conviction before a United States commissioner to the district court of the United States for the district in which the offense was committed, and provides that the Supreme Court shall prescribe rules of procedure and practice for the trial of cases before commissioners, and for taking and hearing such appeals.

Rule 54 (b) (4) of the Rules of Criminal Procedure, entitled "Trials Before Commissioners," states that the rules "do not apply to proceedings before United States commissioners and in the district courts under title 18, U. S. C. A., sections 3401, 3402, relating to petty offenses on Federal reservations." [Emphasis added.]

The Advisory Committee's note to subdivision (b) (4) of rule 54 states in part:

"United States commissioners specially designated for that purpose by the court by which they are appointed have trial jurisdiction over petty offenses committed on Federal reservations if the defendant waives his right to be tried in the district court and consents to be tried before the commissioner. * * * A petty offense is an offense the penalty for which does not exceed confinement in a common jail without hard labor for a period of 6 months or a fine of \$500, or both. * * * Appeals from convictions by commissioners lie to the district court. * * * These rules do not apply to trials before United States commissioners in such cases, since rules of procedure and practice in such matters were specially prescribed by the Supreme Court on January 6, 1941, 311 U. S. 733 et seq. The substantive law applicable in such cases with respect to offenses other than so-called Federal offenses is governed by 18 U. S. C. (1940 ed.), section 468 (laws of States adopted for punishing wrongful acts; effect of repeal). (Now sec. 13 of 18 U. S. C., the 'assimilative crimes' statute.) *In addition, national park commissioners have limited trial jurisdiction with respect to offenses committed in national parks.* Trials before commissioners in such cases are not governed by these rules, although *when a national park commissioner conducts a proceeding as a committing magistrate, these rules are applicable.*" [Emphasis added.]

Most of the petty offenses tried by commissioners under title 18, United States Code, section 3401, are of a trivial nature, such as simple assaults, speeding, reckless driving, etc. That is true both with respect to violations of national park regulations and to the regulations covering jurisdiction of United States commissioners specially designated under title 18, United States Code, section 3401.

Since the bill is limited to bail on felony and misdemeanor charges, and the trial jurisdiction of commissioners is limited to petty offenses, we conclude that the bill does not apply to bail for appearance before a commissioner for trial for a petty offense. It does apply to bail for appearance before a commissioner as a committing magistrate on a charge of misdemeanor or felony, and to a bail order of a commissioner requiring appearance in a district court on a charge of misdemeanor or felony.

(d) Finally, the question was raised whether the bill would be applicable to witnesses in civil actions.

In 8 C. J. S., "Bail," section 5, relating to the right of a person arrested on civil process to be released on bail, it is said:

"* * * It has been held that the Federal courts, since they do not derive their jurisdiction and powers from the common law but have only such powers as they have derived from the Constitution and acts of Congress, have no inherent power to admit to bail, (*United States v. Curran*, 297 Fed. 946) and that the right to bail does not exist except as derived from the Constitution and statutes. * * *

In the leading case of *Barry v. United States ex rel. Cunningham* (279 U. S. 597, the Court said (p. 618)):

"The rule is stated by Wharton, 1 law of evidence, section 385, that where suspicions exist that a witness may disappear, or he spirited away, before trial, in criminal cases, *and when allowed by statute in civil cases, he may be held to bail to appear at the trial and may be committed on failure to furnish it, and that such imprisonment does not violate the sanctions of the Federal or State constitutions.*" [Emphasis added.]

The subpoena procedure in civil actions in the Federal courts for attendance of witnesses is covered by Rule 45 (a) of the Federal Rules of Civil Procedure. Subsection (f) of that rule provides that failure by any person without adequate excuse to obey a subpoena may be deemed a contempt of the court from which the subpoena issued. The Rules of Civil Procedure make no provision for bail or recognizance of a witness.

The Federal Rules of Criminal Procedure, on the contrary, provide, in addition to the subpoena and contempt powers preserved in Rule 17 (a) and (g), for bail for a witness (Rule 46 (b)). The procedure therein set forth, however, is applicable only "if it appears by affidavit that the testimony of a person is material in any criminal proceeding."

Accordingly, we conclude that inasmuch as there is no authority for requiring bail of a witness except in criminal proceedings, the provision of H. R. 8658 in respect of witnesses would not be applicable to witnesses in civil actions.

3. We were requested to supply the text of the recent amendment of the New York bail-jumping statute which made it applicable to witnesses. That amend-

ment was approved by the governor on April 6, 1954, and becomes effective on July 1, 1954.² The full text of the statute, with the amendment underscored, follows:

"The People of the State of New York, represented in Senate and Assembly, do enact as follows:

"Section 1. Section sixteen hundred ninety-four-a of the penal law, as last amended by chapter ninety-four of the laws of nineteen hundred thirty-six, is hereby amended to read as follows:

"Sec. 1694-a. Jumping bail.

"A person who has been admitted to bail in connection with a charge of felony and who fails to appear as required and thereby incurs a forfeiture of his bail is guilty of a felony if he does not appear or surrender himself within thirty days. A person who has been admitted to bail in connection with a charge of committing a misdemeanor and who fails to appear as required and thereby incurs a forfeiture of his bail is guilty of a misdemeanor if he does not appear or surrender himself within thirty days. A person who has been admitted to bail in connection with a charge of committing an offense under subdivisions six or eleven of section seven hundred twenty-two of the penal law, subdivisions four or ten of section eight hundred eighty-seven of the code of criminal procedure or section eight hundred ninety-eight-a of the code of criminal procedure and who fails to appear as required and thereby incurs a forfeiture of his bail is guilty of a misdemeanor if he does not appear or surrender himself within fifteen days. A person detained as a material witness or an accomplice who has been released on giving a written undertaking with or without sureties or who has been admitted to bail, pursuant to the provisions of sections two hundred fifteen, two hundred sixteen, six hundred eighteen-a, or six hundred eighteen-b of the code of criminal procedure who fails to appear as required and thereby incurs a forfeiture of his bail or undertaking is guilty of a misdemeanor if he does not appear or surrender himself within fifteen days."

"SECTION 2. This Act shall take effect July first, nineteen hundred fifty-four."

[1954 McKinney's "Session Law News of New York" (Laws of the 177th Legislature); Advance Sheets, April 25, 1954, No. 6, p. 618.]

Bond forfeitures reported by United States attorneys during first 10 months of fiscal year 1954

Offense charged	Number forfeited	Number apprehended (terminated)	Offense charged	Number forfeited	Number apprehended (terminated)
U. S. C. 8, 180	1		U. S. C. 21, 174	1	1
U. S. C. 8, 1324	4	2	U. S. C. 22, 452	1	
U. S. C. 8, 1326	1	1	U. S. C. 26, 2553	4	
U. S. C. 8, 1328	2		U. S. C. 26, 2554	4	1
U. S. C. 15, 78	1		U. S. C. 26, 2563	1	
U. S. C. 18, 97	1		U. S. C. 26, 2591	3	2
U. S. C. 18, 485	1	1	U. S. C. 26, 2593	4	1
U. S. C. 18, 495	10		U. S. C. 26, 2803	14	3
U. S. C. 18, 641	2	1	U. S. C. 26, 2810	17	7
U. S. C. 18, 658	1	1	U. S. C. 26, 2833	2	
U. S. C. 18, 659	5		U. S. C. 26, 2834	1	
U. S. C. 18, 660	1		U. S. C. 26, 2913	3	1
U. S. C. 18, 702	2		U. S. C. 26, 3253	2	
U. S. C. 18, 1341	2		U. S. C. 26, 3321	3	1
U. S. C. 18, 1708	4	3	U. S. C. 38, 696	1	
U. S. C. 18, 1709	4		U. S. C. 38, 6961	1	
U. S. C. 18, 2115	1		U. S. C. 45, 359	1	
U. S. C. 18, 2312	16	3	U. S. C. 48, 655	1	
U. S. C. 18, 2313	1		U. S. C. 50, 462	3	2
U. S. C. 18, 2314	6	2	U. S. C. 50, 2421	1	1
U. S. C. 18, 2421	3	1			
U. S. C. 18, 2803	1				
U. S. C. 21, 173	3		Total	141	36

CRIMINAL CODE OF CANADA, SECTION 189

Every one is guilty of an indictable offense and liable to 2 years' imprisonment who,

(a) Having been convicted of an offense, escapes from any lawful custody in which he may be under such conviction; or

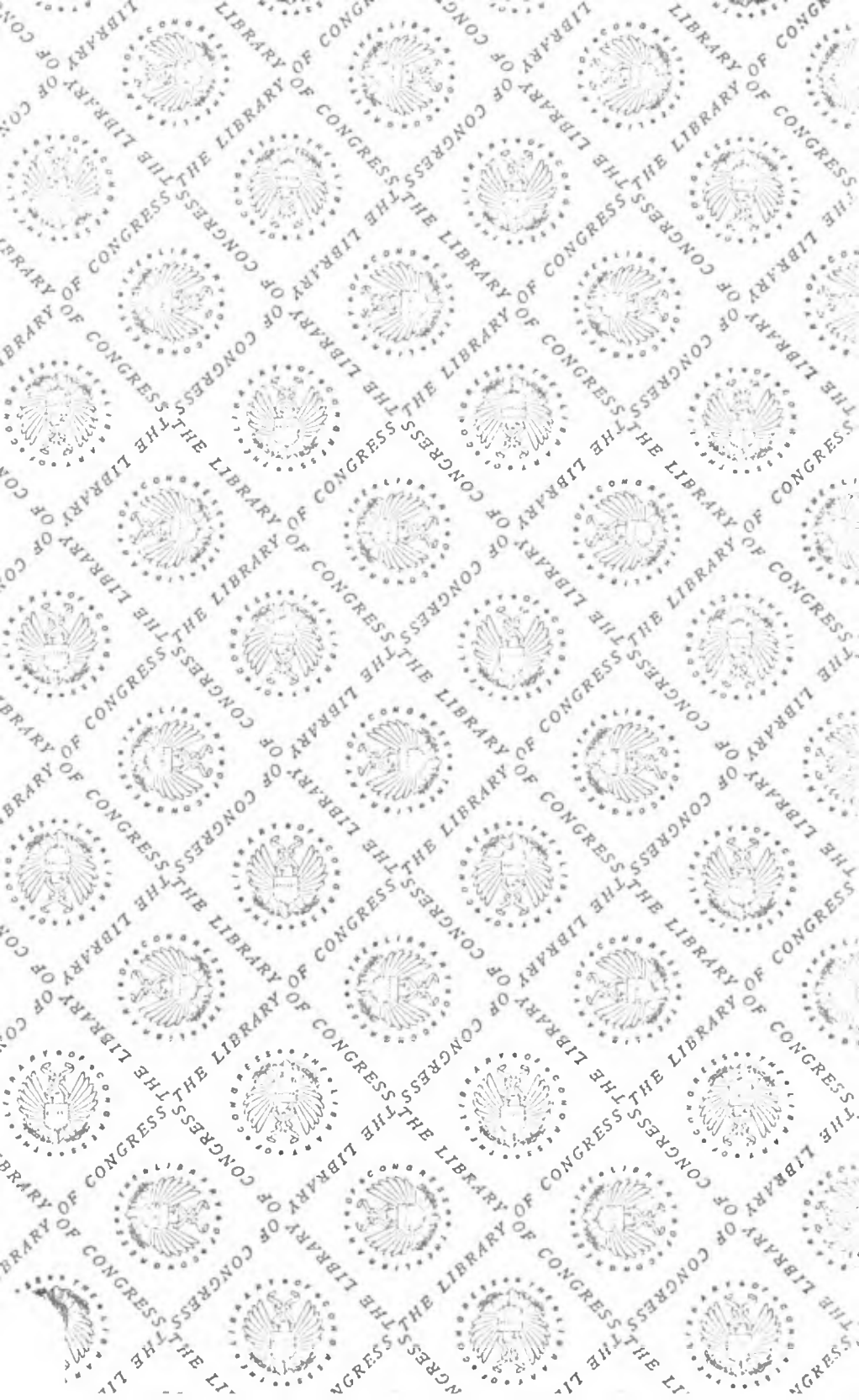
² Ch. 483, laws of 1954.

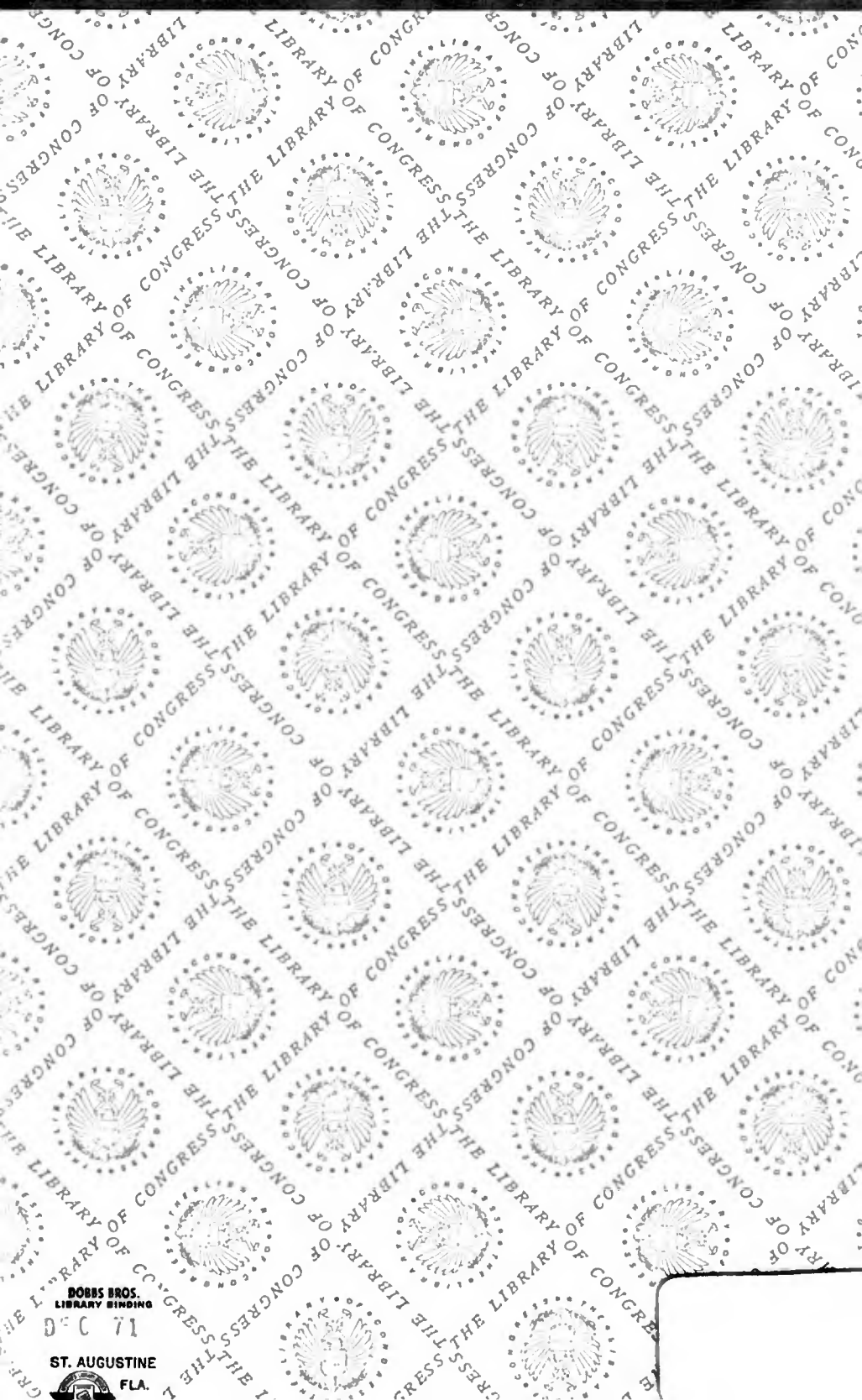
(b) Whether convicted or not, escapes from any prison in which he is lawfully confined on any criminal charge; or

(c) Being on bail prior to his conviction or while his case is pending in any court of appeal does not, without lawful excuse, the proof whereof shall be upon him, present himself at the proper time and place to stand his trial or for the hearing of the appeal, or to receive his sentence, as the case may be. R. S., c. 146, s. 189; 1925, c. 38, s. 3; 55-56 Vict., c. 29, s. 163.

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